

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/08/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.1668 OF 2002

Dhanapal .. Appellant

-Vs-

State

by the Inspector of Police,
Thirupur South Police Station

Thirupur

(Cr. No.160 of 2001) .. Respondent

This Criminal appeal is preferred under Section 374 of Cr.P.C.
against the judgment of the learned Additional Sessions Judge, Fast Track
Court No.4, Coimbatore at Thirupur in S.C.No.231 of 2001 dated 30.07.2002.

!For Appellant : Mr.N.Ramu

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate (Crl. Side)

:JUDGMENT

The sole accused in a case of robbery, who stood charged, tried, found
guilty under Section 397 IPC and sentenced to undergo RI for eight years with
a fine of Rs.4000/- in default 6 months RI has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal can be
stated as follows:

- a) P.W.1 Kannapiran was the resident of Tirupur. On 13.3.2001 at
about 3.30 p.m. When he waited at Old Bus stand, Tirupur for going to
Mettupalayam, the appellant came there with Aruval MO1, threatened him and
snatched away a cash of Rs.450/- kept in his pocket and also snatched away a
Citizen watch MO2 worn by P.W.1 at that time. P.W.1 showed his resistance.
But the accused by showing Aruval uttered that rg;jk; nghl;lhy; bfhd;W tpLntd;
and ran away from the place of occurrence with the robbed articles. P.W.2 to
4 and 6, who were in the bus stand, witnessed the said occurrence.
- b) P.W.1 rushed to the Tirupur South Police Station and lodged a
complaint under Ex.P.1 before P.W.10 Sanmugaiyah, Inspector of Police. On the
strength of which, P.W.10 registered a case at about 4.15 p.m. in crime

No.160 of 2001 under Section 397 IPC. Express F.I.R. Ex.P.1 0 was despatched to the concerned court. P.W.10 took up investigation, proceeded to the site of occurrence, made an observation and prepared observation mahazar Ex.P.2 and rough sketch Ex.P.11 in front of P.W.5 Balasubramanian and P.W.6 Thilagar. He examined P.Ws.1 to 4, 6 and 7 and recorded their statements. He also recovered broken soda bottle pieces MO5 series under Ex.P.3 in front of the P.W>5 and the other witness.

c) On 14.3.2001 at about 11.00 a.m., P.W.10 arrested the appellant/accused, who was identified by P.W.1 near Selvam Nagar Bus stand, Tirupur. The accused has given voluntary confessional statement before P.W.10 and the same was recorded in front of P.Ws.8 and 9. The admissble portion of the confessional statement of the accused was marked as Ex.P.12. Pursuant to the confessional statement given by the accused, M.O.2 Citizen watch and M.O.4 (series) cash of Rs.300/- were recovered under Ex.P.13 in front of P.Ws.8 and 9. The appellant took P.W.1 0 to his house and produced M.O.1 Aruval and the same was recovered under Ex.P.14 mahazar in front of P.Ws.8 and 9. P.Ws.8 and 9 were examined by P.W.10 and their statements were recorded. The accused was sent for judicial custody and the properties were also produced under Form 95 to the Court. P.W.1 was reexamined by P.W.10. He completed the investigation and laid a charge sheet against the accused under Section 397 IPC on 21.4.2001.

3. In order to prove the charges levelled against the accused, the prosecution examined 10 witnesses and marked 14 exhibits and 5 M.Os. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which he flatly denied as false. No defence witnesses were examined. On consideration of the rival submissions made and careful scrutiny of the materials available, the trial court found the accused guilty under Section 397 IPC and sentenced to undergo imprisonment as referred to above. Aggrieved appellant has brought forth this appeal.

4. Advancing arguments on behalf of the appellant, the learned Counsel Mr.N.Ramu has made the following submissions:
The trial court without sufficient evidence has found the appellant guilty. The appellant/accused was not known to P.W.1 or any one of the witnesses examined by the prosecution earlier to the occurrence. Under such circumstances, identification parade should have been conducted. The case of the accused was that he was not involved in the alleged crime. P.Ws.2 and 3 have turned hostile. There were discrepancies in the evidence of the prosecution witnesses. P.Ws.1,4 and 6 were examined as eyewitnesses. The evidence adduced by the prosecution as to the arrest and confessional statement was nothing but a tissue of falsehood. Both the witnesses examined in this regard, namely P.Ws.8 and 9, have turned hostile, and hence, the prosecution has not adduced any evidence in respect of arrest, confessional statement and the recovery of M.Os. Under the stated circumstances, without proper appreciation of evidence, the trial court has found the appellant guilty under Section 397 IPC. Hence, the appellant is entitled for an acquittal in the hands of this Court.

5. Strongly opposing all the contentions put forth by the appellant's side, Mr.V.Jaya Prakash Narayan, the learned Government Advocate (Criminal side) would submit that the occurrence has taken place during day time; that P.W.1 has clearly narrated the whole incident, which was fully corroborated by two eyewitnesses, namely P.Ws.4 and 6; that all of them have identified the appellant that it was he who committed the said offence; that it is true that both the witnesses examined for the recovery of M.Os. have turned hostile; that the accused was arrested the next day; that on his confessional statement, the subject matter of robbery, namely M.O.1 Aruval, M.O.2 Citizen watch and M. O.4 (series)Rs.300/- (Rs.450/- was actually snatched by the appellant) were recovered from the accused; that they were produced before the court and the appellant was also produced before the Court; that the evidence of P.Ws.1, 4 and 6 coupled with the recovery of the robbed articles pursuant to the confessional statement given by the accused would clearly prove the prosecution case and the trial court found the appellant guilty, and hence, the judgment of the trial court has got to be sustained.

6. On careful appraisal of the materials available and consideration of the rival submissions made, this Court is unable to notice any substance in this appeal.

7. The gist of the prosecution case as stated above was that when P.W.1 was waiting at old bus stand, Tirupur at about 3.30 p.m. on 13.3.2001, the appellant came with MO1 Aruval, threatened him and snatched away a cash of Rs.450/-, which P.W.1 kept in his pocket and M.O.2 citizen watch from him, despite his resistance. The prosecution in order to prove the crime has examined P.W.1, the owner of the said properties and from whom, the same were robbed and P.Ws.2,4 and 6. It is true that P.Ws.2 and 3 have turned hostile, but P.Ws.4 and 6, who were nearby in the bus stand, have categorically deposed that the crime was committed by the appellant, and thus, the evidence of P.W.1 was fully corroborated by the evidence of P.Ws.4 and 6. All the three eyewitnesses have clearly identified the appellant before the Court. It is pertinent to point out that the accused/appellant was arrested the very next day and he was also identified by P.W.1. Since the occurrence has taken place in a day time and the nature of occurrence was like that P.W.1 and the other two witnesses cannot forget the identity of the accused, they were able to identify the accused before the Court clearly. Thus, the contention of the appellant's side that the accused/appellant was not known to them previously and no identification parade was conducted cannot be countenanced. The very next day to the occurrence, namely on 14.3.2001, the appellant/accused was arrested and M.O.2 Citizen watch and M.O.4 (Series) Rs.300/- part of the robbed amount, namely, Rs.450/- were recovered from the accused pursuant to the confessional statement given by him and they were produced before the Court along with the accused. Hence, it would be abundantly clear that the arrest and the recovery of M.Os. on the very next day would clearly be pointing to the guilt of the accused when coupled with the evidence put forth by the prosecution through P.Ws.1,4 and 6. Hence, this Court is unable to notice any merit in this appeal. This court is of the view that the trial court was perfectly correct in recording a conviction against the accused under Section 397 IPC.

8. Coming to the question of sentence, the trial court has awarded punishment of 8 years and a fine of Rs.4000/- in default 6 months RI. This

Court is of the view that awarding punishment of seven years RI along with a fine of Rs.500/- in default two months RI would meet the ends of justice. Accordingly, the sentence awarded by the trial court to the accused/appellant under Section 397 IPC is reduced to seven years along with a fine of Rs.500/- in default two months RI. With the above modification, this criminal appeal is dismissed. In other respect, the judgment of the trial court is confirmed.

Index : Yes

Internet : Yes

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To

1. The Addl. Sessions Judge, Fast Track Court No.4, Coimbatore at Tirupur
2. The District and Sessions Judge, Coimbatore
3. The Public Prosecutor, High Court, Chennai
4. The Superintendent, Central Prison, Coimbatore
5. The Dy. Inspector General of Police, Chennai-4
6. Mr.V.Jaya Prakash Narayan, Govt. Advocate(Cri. Side) High Court, Chennai
7. The Inspector of Police, Tirupur South Police Station Tirupur.

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